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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91210390
Party	Plaintiff Feel the World, Inc.
Correspondence Address	David Mastbaum Law Office of David Mastbaum PO Box 806 Boulder, CO 80306 UNITED STATES dmast@mastlaw.com
Submission	Motion to Amend Pleading/Amended Pleading
Filer's Name	David Mastbaum
Filer's e-mail	dmast@mastlaw.com
Signature	/David Mastbaum/
Date	06/13/2013
Attachments	001.tif(668616 bytes)

Feel the World, Inc.

Opposer,

V.

Heapsylon, LLC.

Applicant.

AMENDED OPPOSITION

Opposition No. 91210390

Application Serial No. 85778259.

To: Commissioner for Trademarks
United States Patent and Trademark Office

Feel the World, Inc. (“Opposer”), a Delaware corporation, with its principal place of business located at 5470 Conestoga Ct., Boulder, CO 80301, believes that it will be damaged by registration of the standard character mark “Sensoria,” which is the subject of Application Serial No. 85778259 filed by Heapsylon, LLC (“Applicant”), a Nevada limited liability company, with its principal place of business located at PO Box 3324, Redmond WA 98073, and hereby opposes the same. A description of the trademark application at issue is as follows:

MARK: "Sensoria"

APPLICATION SERIAL NO.: 85778259

FILED: 13 November 2012

FILING BASIS: 1(b)

INTERNATIONAL CLASS: 25

PUBLISHED IN THE OFFICIAL GAZETTE ON: 16 April 2013

The grounds for the opposition are:

1. On 13 November 2012, Applicant filed an intent to use application (1(b)) to register the standard character mark "Sensoria" (Serial No. 85778259) without claim to any particular font, style, size, or color in International Class 25 for "Anklelets; Footwear; Socks." (On 19 May 2013, after this Opposition was filed, Applicant filed an application (1(a)) to register the standard character mark "Sensoria" (Serial No. 85936216) without claim to any particular font, style, size, or color in International Class 9 for "Computer application software for smartphones, tablets, mobile phones, portable media players, handheld computers, namely software for body sensors for tracking pressure and force while running and walking; Computer hardware and software for body sensors for tracking pressure and force while running and walking ." This application is not at issue in this proceeding.)

2. Opposer sells footwear and clothing. On 14 November 2012, Opposer filed an intent to use application (1(b)) to register the standard character mark "Sensori" (Serial No. 85779750) in International Class 25 for "Bottoms; Footwear; Sports caps and hats; Tops."

3. On 10 March 2013, the United States Patent and Trademark Office issued an Office Action related to Opposer's trademark application (Serial No. 85779750) that said, in part, if Applicant's mark (Serial No. 85778259) registers, because the filing date of the application precedes Opposer's application (Serial No. 85779750), Opposer's mark may be refused registration because of the likelihood of confusion with Applicant's mark.

2. Applicant used the mark "Sensoria" in a stylized/design format on its website (offering its products for "beta") www.heapsylon.com with the federal registration symbol ®

during 2013. Ex. A. (After this Opposition was filed, Applicant discontinued use of the federal registration symbol ® for “Sensoria,” and began using the “TM” symbol for “Sensoria.”)

Applicant has not applied for or obtained a federal trademark registration for “Sensoria” in a stylized/design format. Applicant’s pending application for “Sensoria” (Serial No. 85778259), at issue here, is as a standard character mark. Applicant’s use of the federal registration symbol on its website for the mark “Sensoria” in a stylized/design format is improper because it has not obtained a federal trademark registration for the mark. TMEP §§ 906, 906.02, 906.04; *See* 15 U.S.C. § 1111.

3. Applicant uses both registered (“SnapSize,” Reg. No. 4207736; “AutoXpense,” Reg. No. 4097389) and unregistered (*E.g.*, “The Garment is the Computer”) trademarks, and knows that different trademark symbols are used depending on whether the mark is registered federally. On information and belief, Applicant’s improper use of the federal registration symbol ® for Sensoria in a stylized/design format was deliberate, and by such improper use Applicant intended to deceive or mislead the general public, purchasing public, and others in the trade into believing that the mark, whether in standard character or stylized/design format, is registered. The necessary information on Applicant’s intent in using the federal registration symbol ® for “Sensoria” is within Applicant’s control, and additional evidence of Applicant’s fraud is likely to be obtained after disclosure and discovery in this case. Because Applicant knows that the federal registration symbol ® can only be used for marks that are federally registered, and “Sensoria” is not registered federally, Applicant’s improper use of the federal registration symbol ® for “Sensoria” is fraudulent and registration (Serial No. 85778259) should be denied. TMEP §§ 906, 906.02, 906.04; *See* 15 U.S.C. § 1111.

4. Applicant and Opposer both sell footwear or footwear-related products; accordingly, they are competitors. If the Application to register "Sensoria" (Application Serial No. 85778259) is denied, Opposer will have priority for "Sensori" over Applicant's "Sensoria" mark; thus, if "Sensoria" is registered, Opposer will be damaged because "Sensori" will not have priority over "Sensoria." Applicant's fraudulent use of the federal registration symbol ® for "Sensoria" damages the general public, including Opposer, because it is a violation of United States trademark law. TMEP §§ 906, 906.02, 906.04; *See* 15 U.S.C. § 1111.

WHEREFORE, Opposer requests that this opposition be sustained, and Application Serial No. 85778259 be denied in all respects.

Dated: 13 June 2013

Respectfully submitted,

LAW OFFICE OF DAVID MASTBAUM

Attorneys for Opposer, Feel the World, Inc.

/David Mastbaum/

David Mastbaum
Attorney of Record, Colorado Bar Member
P.O. Box 806
Boulder, CO 80306
(303) 442-1580
dmast@mastlaw.com

Certificate of Electronic Filing

I certify that this Amended Opposition with Exhibit A is being transmitted electronically via ESTTA to the United States Patent and Trademark Office on 13 June 2013.

/David Mastbaum/
David Mastbaum

Certificate of Service

I certify that a true and complete copy of the foregoing Notice of Opposition with Exhibit A has been served on Anthony M. Verna, attorney for Heapsylon, LLC, Applicant, by mailing said copy on 13 June 2013 via First Class Mail, postage prepaid, to:

Anthony M. Verna
Kravitz & Verna LLC
PO Box 3620293
PACC
New York, NY 10129

and via email to:

avera@kravitzverna.com

/David Mastbaum/
David Mastbaum

EXHIBIT A

Heapsylon

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Heapsylon Sensor Technology

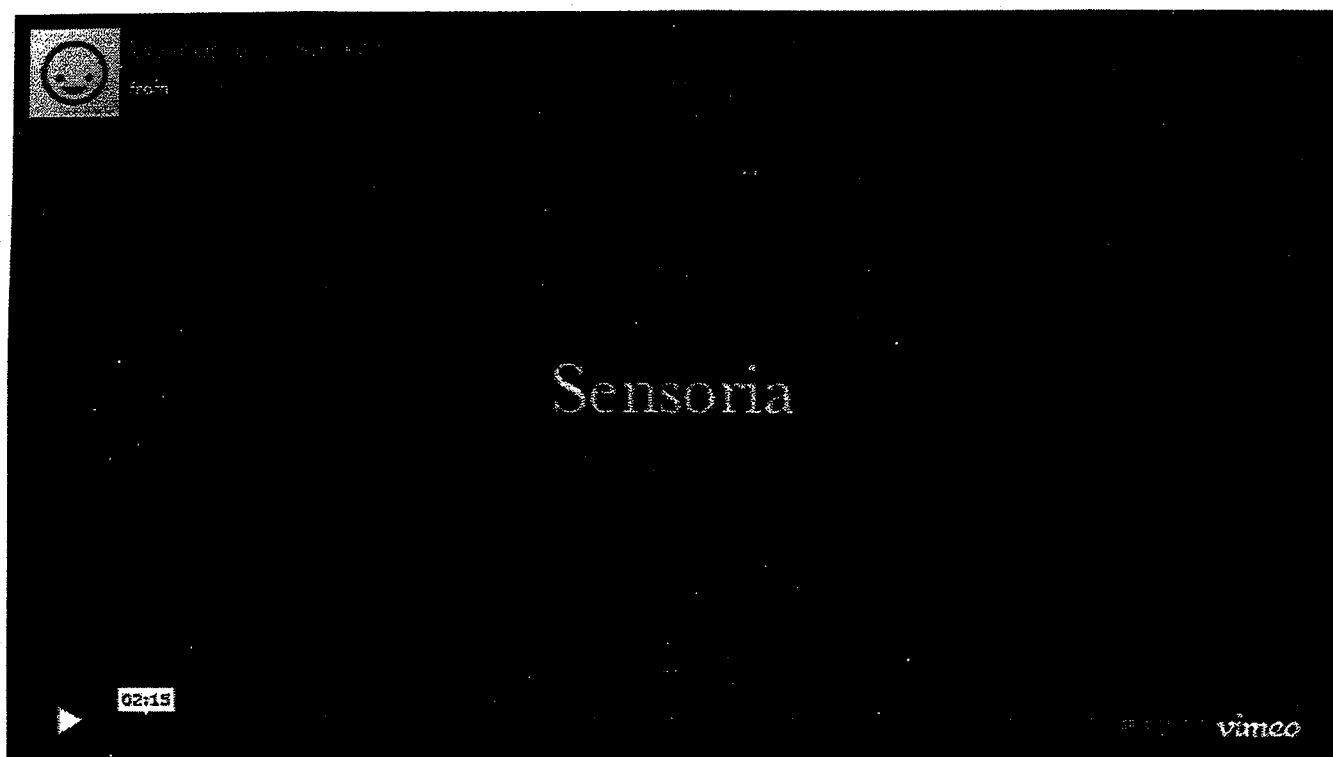


At Heapsylon we believe that in the near future each piece of clothing, garments and accessories will become computers. Heapsylon delivers on this vision by designing and developing body-sensing solutions that improve people's lives.

Heapsylon's products can track activity type and level, in-footwear pressure and other interesting data coming from your foot. We call our new products Sensoria. Sensoria is the part of the brain where all nerves in our body come together. That is what our smart socks do by connecting their sensors to any of your mobile or big screen devices. After over two years of research and development our new wearable devices for fitness and healthcare are now at prototype stage.

Check out our Sensoria Fitness and Sensoria Healthcare product stories and let us know what you think. They are the first prototypes of our new family of body-sensing wearable devices. Coming soon to a foot near you!

If you'd like to learn more please send us an email at [info\[at\]heapsylon.com](mailto:info[at]heapsylon.com).





Launch

Sensoria Product Family

Sensoria is the part of the brain where all nerves in our body come together. That is what our smart socks do by connecting their sensors to any mobile or big screen devices.

Our Core Tenets

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Our Top Ten List

At Heapsylon we think that the new era of personal and wearable computing should be: Transparent, Comfortable, Convenient, Unforgettable, Actionable, Powerful, Desirable, Social, Respectful, Always Connected.

Sensoria Healthcare

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Diabetic foot complications

Every time you stand up or take a step you are generating valuable data that, if properly analyzed, can produce meaningful views of your health and the way you use your whole body.

Sensoria Fitness